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FCC APPROVES NEW NON-COMMERCIAL LOW POWER FM RADIO SERVICE

Washington D.C. --The FCC today voted to create a class of radio stations designed to serve very localized communities or underrepresented groups within communities by authorizing two new classes of noncommercial low power FM radio services (LPFM).

In authorizing the new services - (1) LP 100, with power from 50-100 watts and a service radius of about 3.5 miles; and (2) LP10, with power from 1-10 watts and a service radius of about 1 to 2 miles - the Commission said it is adopting interference protection requirements based on distance separation between stations to preserve the integrity and technical excellence of existing FM service and to not impede the ability of existing radio stations to transition to digital transmission capabilities.

The Commission said the new service would enhance community-oriented radio broadcasting. Broad national interest in LPFM service was demonstrated by the thousands of comments received from state and local government entities, religious groups, students, labor unions, community organizations, musicians, and others supporting the introduction of a new LPFM service.

The Commission said that to prevent interference, it will impose station separation requirements between new LPFM and existing radio stations on co-, 1st- and 2nd- adjacent and intermediate frequency (IF) channels, but will not impose 3rd adjacent separation requirements because the engineering data and tests in the proceeding demonstrated that 100 watt LPFM service will not cause any unacceptable levels of interference to existing radio stations separated by three channels.

Applicants for new or modified LP100 or LP10 facilities will be required to meet minimum station separation distances to protect the service contours of (1) authorized commercial and noncommercial FM stations of all classes; (2) existing FM translator and booster stations and any LP100 stations; and (3) full-service FM, FM translator and LP100 facilities proposed in applications filed before a public notice announcing any LPFM application filing window.

The Commission said a noncommercial service will be the best way to bring additional diversity to radio broadcasting and serve local community needs in a focused manner with LPFM stations. Eligible licensees can be noncommercial government or private educational organizations, associations or entities; non-profit entities with educational purposes; or government or non-profit entities providing local public safety or transportation services. However, LPFM licenses will be awarded throughout the FM radio band and will not be limited to the channels reserved for use by noncommercial educational radio stations

The Commission said that to further its goals of diversity and creating opportunities for new voices, no existing broadcaster or other media entity can have an ownership interest, or enter into any program or operating agreement, with any LPFM Station. In addition, to encourage locally originated programming, LPFM stations will be prohibited from operating as translators.

To foster local ownership and diversity, during the first two years of LPFM license eligibility, licensees will be limited to local entities certifying that they are physically headquartered, has a campus or has 75% of their board members residing, within 10 miles of the station they seek to operate. During this time, no entity may own more than one LPFM station in any given community. After two years from the date the first applications are accepted, in order to bring into use whatever low power stations remain available but unapplied for, applications will be accepted from non-local entities.

For the first two years, no entity will be permitted to operate more than one LPFM station nationwide. After the second year, eligible entities will be able to own up to five stations nationwide, and after three years, up to ten nationwide.

LPFM stations will be licensed for eight-year, renewable terms. These licenses will not be transferable. Licensees will receive four-letter call signs with the letters LP appended.

Applications will be accepted in designated filing windows. The first filing window to be opened will be for LP100 licenses. After the bulk of these applications have been processed, the Commission will open a filing window for applications for LP10 licenses. The Commission said it expected opportunities to remain for LP10 stations.

The Commission will announce in a subsequent Public Notice a designated five-day filing window for LP100 applications after the effective date of the LPFM Order, which will be 60 days publication of this Order in the Federal Register. The Commission said the filing window system is preferable to a first-come/first-serve filing system that could disadvantage potential applicants. Electronic filing is permissible but not mandatory.

Mutually exclusive applications for the same license will be resolved by a clear-cut selection process awarding applicants one point each for (1) certifying an established community presence of at least two years prior to the application, (2) pledging to operate at least 12 hours daily, and (3) pledging to air at least eight hours of locally originated programming daily. Time sharing proposals will be used as a tiebreaker if applicants have the same number of points. Where ties have not been resolved, a group of up to eight mutually exclusive applicants will be awarded successive license terms of at least one year for a total of eight years. These eight-year licenses will not be renewable.

Eligible licensees will be subject to the same character qualifications as are currently applied to full power licensees. The Commission said that entities that had broadcast without a license in the past could apply for LPFM licenses if they certify (1) that they had voluntarily ceased engaging in unlicensed operations no later than February 26, 1999, without specific direction from the FCC, or (2) that they had ceased engaging in unlicensed operations within 24 hours of being advised by the Commission to do so. Entities who continued illegal broadcasting will be ineligible for any broadcast license.

LPFM stations will be required to broadcast a minimum of 36 hours per week, the same requirement imposed on full power noncommercial educational licensees. They will be subject to statutory rules, such as sponsorship identification, political programming, prohibitions of airing obscene or indecent programming, and requirements to provide periodic call sign announcements, and will be required to participate in the national Emergency Alert System.

LPFM stations will not be subject to the FCC's main studio, ownership report and public file requirements. The Commission said it expects that the local nature of the LPFM service, coupled with the eligibility and selection criteria being adopted, will ensure that LPFM licensees will meet the needs and interests of their communities, and thus LPFM licensees will not be subject to a locally originated program requirement.

Subsequent information on the LPFM application process will be available on the FCC's LPFM website at www.fcc.gov/mmb/prd/lpfm or interested parties can call the FCC's toll free telephone number 1-888-CALLFCC (1-888-225-5322).

Action by the Commission January 20, 2000, (FCC 00-19) Chairman Kennard, Commissioners Ness, and Tristani, Commissioner Powell dissenting in part, Commissioner Furchtgott-Roth dissenting, each Commissioner issuing a separate statement.

MM Docket No. 99-25

- FCC -

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SEPARATE STATEMENT OF COMMISSIONER GLORIA TRISTANI

Re: Creation of a Low Power Radio Service (MM 99-25)

The radio business has undergone unprecedented and gargantuan consolidation over the past several years. Since the 1996 Telecommunications Act was passed, the number of radio station owners has decreased about 12% (and proposed mergers would reduce that number even further), even though the total number of stations has actually *increased* by almost 4%. As radio has become concentrated in fewer and fewer hands -- and as distant owners, national play lists and syndicated programming become more and more prevalent -- I've grown increasingly concerned about the effect of consolidation on localism and the diversity of voices on the public airwaves.

The new low power radio service we are adopting is a partial antidote to the negative effects of consolidation. It promotes localism and diversity not by limiting the rights of existing voices, but by adding new voices to the mix. Under the First Amendment, this is the best kind of response -- the answer is more speech, not less. The new low power service also comports with our statutory obligation to "[s]tudy new uses for radio . . . and generally encourage the larger and more effective use of radio in

The public response to the low power radio proposal has been enormous. We've heard from thousands of individuals, schools, churches, community groups and local government agencies who would like to use the public airwaves to serve their communities, but cannot under our existing rules. We've also heard from countless individuals who would like to hear more varied voices over the public airwaves. Providing an outlet for new voices to serve their communities is why I am proud to support this new service.

I have carefully considered the concerns of low power opponents who worry about undue interference in the FM band. Based upon the engineering data in the record, however, I am convinced that nothing we are adopting will jeopardize the technical integrity of the spectrum or the transition to digital radio.

I have also heard the concerns of broadcasters who worry that competition from low power broadcasters could make it harder for them to survive. I would respond as follows. First, we have made low power radio a noncommercial service, so there will be no direct competition for advertising dollars. Second, while I understand broadcasters' competitive concerns, and while many of them have served their communities with distinction over the years, I believe it is the Commission's duty to maximize competition wherever and whenever we can. That's why, for example, the Commission licensed satellite radio -- a potentially significant competitor to terrestrial radio set to debut commercially in the near future. It would be a dangerous precedent for the government ever to declare that there is "enough" competition in any market.

¹ See Communications Act, Sec. 303(g).

Ultimately, however, the adoption of a new low power radio service has been driven by the scores of Americans who want to use the public airwaves to speak to their fellow citizens, and the scores of Americans who want to hear the additional diversity these speakers could provide. Under the conditions set forth in this Order, I can find no legitimate government interest in denying these citizens what they seek.

January 20, 2000

**In the Matter of Creation of Low Power Radio Service, MM Docket No. 99-25
Report & Order
Dissenting Statement of Commissioner Harold W. Furchtgott-Roth**

I am relieved that the Commission has not demolished first- and second-adjacent channel protections in this Report & Order. But I can not support, for the reasons set forth below, even the elimination of third-adjacent channel protections. Accordingly, I dissent from these new rules establishing "low power" radio licenses.

I dissented from the Notice of Proposed Rulemaking in this proceeding. See Notice of Proposed Rulemaking, Creation of a Low Power Radio Service, MM Docket No. 99-25 (Jan. 28, 1999). I did so because the Notice did not simply propose the creation of a new service within existing interference protection standards but went far beyond that, suggesting the elimination of third-, second- and even first-adjacent channel protections. As I explained, such action harms existing license holders and their listeners, while producing very little in the way of countervailing benefits. See *generally* Dissenting Statement of Commissioner Harold W. Furchtgott-Roth, *Notice of Proposed Rulemaking, Creation of a Low Power Radio Service*, 14 FCC Rcd 2471 (1999).

In the intervening twelve months, we have received many comments on this proposal, as well as engineering studies on the level of interference posed by the potential stations. Unfortunately, this entire proceeding has been marked by a rush to judgment. The Commission has simply not taken the time to do the right technical studies, the right way.

Even without studying the engineering studies in the record, we can be sure of one thing. As Commissioner Quello once noted, "it is axiomatic that for each new service introduced, interference to existing service is also introduced." Dissenting Statement of Commissioner James H. Quello, *Modification of FM Broadcast Station Rules to Increase the Availability of Commercial FM Broadcast Assignments*, 48 FR 29486, 29512 (1983) (BC Docket No. 80-90). This is true even for 100 watt stations dropped by eliminating "only" third adjacent channel protections. There are real costs -- to existing stations, their listeners, and to public perception of the quality of FM radio as a media service -- here that the Commission has not even attempted to quantify.

But let's consider what the Commission today has actually achieved in terms of benefits to place on the other side of the ledger. According to the NPRM in this proceeding, elimination of third adjacent channel protections for 100 watt stations will allow for the creation of *one* such station -- in Houston, Texas -- in the top five American cities. *No* such stations will be created in New York, Los Angeles, Chicago, Philadelphia, San Diego, Dallas, San Francisco, Washington, Charlotte, or Miami. So much for the goal of creating low power stations to serve urban communities; there will be precious few new licensees in urban markets.

To the contrary, the bulk of new licensees will be smaller markets. In many of these areas, full power stations likely could already be dropped in *without* changing third-adjacent channel standards at all. (At least, there is no indication of an effort on the part of the Commission even to consider such an alternative approach.) Given that there is little existing demand for additional full-power stations in these markets, there is no evidence of commercial viability. Indeed, the evidence suggests that such stations are not capable of existence as going concerns.

Perhaps there *is* a demand for lower power noncommercial stations. Theoretically, however, any such actual demand could be met by the dispensation of licenses within our existing rules – *i.e.*, by giving out 101 watt licenses consistent with the 100 watt minimum requirement. See 47 C.F.R. section 73.211(a)(3).² Yet again, we receive few if any applications for 101 watt licenses, even in the noncommercial arena. Similarly, if somebody really wanted to operate a 50-watt station, they might file a request for waiver of the 100-watt minimum rule. As far as I can tell, though, no such waiver has ever been filed, again suggesting a lack of any real demand for such licenses. In short, there is no evidence in the behavior of license applicants that suggests any pent-up demand for the stations in question.

The Commission has also made clear its intent to create these stations for the use of church groups. See Report & Order at para. 5. Since the relevant regulatory classification now is noncommercial educational (“NCE”), the Commission would seem bound to apply its recently adopted “future guidance” on the meaning of “educational” programming to these religious entities.³ That guidance would narrow the scope of religious programming that qualifies as educational for purposes of a valid NCE designation. I wonder whether these groups are aware – and how they will feel when they learn – that the broadcast of religious services may not count towards the required amount of educational programming that they must air in order to retain their licenses. See *In re Applications of WQED Pittsburgh and Cornerstone Television, Inc.* MM No. 99-393 (rel. Dec. 29, 1999).⁴ I also wonder whether they are aware that under that decision they might be required to serve the needs of the “entire” community, rather than

Report & Order at para. 17. So much for the goal of creating low power stations for use by churches and church groups.

² Notably, the rationale for the 100-watt minimum was efficiency in spectrum distribution. It was thought inefficient, unwise, and unmanageable to license radio stations at operating powers any less than this. See 33 Fed Reg 7574. Today’s Order never comes to terms with the Commission’s clear statements about the need for the 100-watt floor.

³ To be sure, the WQED Order involved television broadcast licenses, as opposed to radio broadcast licenses. But both sorts of licenses are categorized as “noncommercial educational.” I can see no non-arbitrary way to limit the decision on the meaning of the term “educational” to the television context, however. There is nothing about the nature of the media at issue – television versus radio – that could justify the use of two different definitions of the substantive adjective “educational.” Programming does not change its “educational” nature simply because it is received on a radio as opposed to a television.

⁴ See also http://www.fcc.gov/Bureaus/Mass_Media/Orders/1999/fcc99393.txt.

And will the newly recreated Equal Employment Opportunity rules apply to low power stations with 5 or more employees? See 47 CFR section 73.2080(a) (applying rules to “*all* licensees or permittees of commercially owned or noncommercially operated AM, FM, TV or international broadcast stations”) (emphasis added). Presumably they must, just as, for instance, the political programming rules do. The required outreach and paperwork for EEO alone, not to mention all other regulations, may prove overwhelming for the operators of low-power radio stations. If these duties are taken seriously by operators and enforced by the Commission, low power operators will spend more time attempting to figure out what Title 47 of the Code of Federal Regulations requires of them than they will spend broadcasting.

The net result of the foregoing is that there is very little evidence – in the form of applications for, say, 101 watt stations or waivers of the 10-watt minimum – indicative of current market demand for the stations now being created. Layered on top of the apparently low state of demand for these licenses today are the many regulations to which the stations will be subject. Any current demand for 100 and 10 watt stations will only be dampened by these regulatory burdens.

In short, the Commission has, at the expense of existing service quality, created: a handful of new stations in primarily non-urban areas; stations that may not meet their licensing requirements if they air religious programming; stations that may well be unlistenable by fixed listeners due to interference received from higher power stations; a threat to the development of digital radio services; a heavy regulatory scheme, including cross-ownership, political programming rules, and EEO outreach duties, to govern these very small operators; and more enforcement and administration burdens for the Commission. This is not a wise balance of interests. I therefore dissent.

January 20, 2000

**STATEMENT OF COMMISSIONER MICHAEL K. POWELL,
DISSENTING IN PART**

*Re: Report and Order - In the Matter of Creation of Low Power Radio Service
(MM Docket 99-25)*

This item's goal is to create a class of radio stations "designed to serve very localized communities or underrepresented groups within communities." *Notice of Proposed Rulemaking*, MM Docket No. 99-25, 14 FCC Rcd 2471, 2473 (1999). Attempting to give greater voice to narrower interests is generally laudable and I support the objective. But, the question that gives me pause is what the cost is to existing stations that provide equally valuable service to their communities. Because this *Order* fails to give credence to this concern, I respectfully dissent in part.

I do not quibble with the Commission's objectives. Certainly, the extensive consolidation of radio stations into large commercial groups and the financial challenges of operating full power commercial stations have limited the broadcasting opportunities for highly localized interests. The introduction of a low power FM service may partially address this concern. However, to borrow from the teaching of the medical profession, when trying to treat a problem, we should "first do no harm."⁵ There presently exist many small and independent stations across the country that are especially notable for their local focus. This admirable group includes a fair number of stations owned by minorities and women, as well as stations with smaller audiences and limited advertising. These stations have struggled to survive as independent voices against the rising tide of consolidation brought on by the economic stress of small scale production. It would be a perverse result, indeed, if these stations were to fail or the quality of locally originated programming suffer, because new LPFM stations diluted their already tenuous base of support.

There are two interrelated, yet distinct, threats to these small stations that stem from the new LPFM service: 1) signal interference and 2) erosion of economic viability. The first has garnered all the attention. The Commission has endeavored to minimize the dangers of interference in this item. It wrongly has ignored the second concern.⁶ I have met with a number of small market broadcasters that tell me that when they raise concerns about the threat of LPFM to their economic viability they are bluntly rebuked—told that such considerations are of no import, that we are only concerned with spectrum

⁵ Paraphrasing *Of the Epidemics*. Hippocrates. Translated by Francis Adams (found at <http://classics.mit.edu/Hippocrates/epidemics.1.i.html>).

⁶ See Comments of John Haring and Harry M. Shooshan III "LPFM: The Threat to Consumer Welfare," *In re Creation of a Low Power Radio Service, Notice of Proposed Rulemaking*, MM Dkt No. 99-25 at 24. (Haring & Shooshan) contained in Comments of the National Association of Broadcasters, vol. I ("A station's economic scale of operations is affected both by technical parameters of the broadcast 'machine' it operates and the competitive economic environment in which it operates. The premise of the Commission's LPFM proposal is that the operative constraint on very 'narrowcast' broadcast operations is primarily technical. . . . That is a false premise: In today's operating environment, the constraint on narrowcast programming is primarily economic rather than technical.").

efficiency and that we do not pick winners and losers. I, too, heard this line during our internal deliberations. I find the proposition absurd. We regularly consider the economic impacts of our actions on licensees. Just one example is the degree to which we have attempted to balance the need for consolidation to achieve economic efficiency against our goal to foster myriad diverse voices. Indeed, the Commission itself has recognized that the industry's ability to function in the public interest, convenience and necessity is fundamentally *premised on the industry's economic viability*.⁷

The introduction of the LPFM service is not simply a way to get greater use out of the spectrum, regardless of who gets the benefits. It is a policy choice to create stations that allow very small communal and parochial interests to find a voice. We are not agnostic as to whether they proliferate and prosper. Indeed, we have made special accommodations to suit our conception of this service, like eliminating the third adjacency protections normally imposed on FM broadcasters. Indeed, for years small broadcasters have tried to expand their services to the community by seeking more lenient interference restrictions, but to no avail. Similarly, we are minting a unique and distinct definition of “community” in order to facilitate the LPFM service. My view is to make such accommodations for this service, while putting our heads in the sand as to the economic impacts on existing stations is in fact, contrary to the assumption of some, picking winners and losers.

The threat to small independent broadcasters by the introduction of LPFM service is not trivial.⁸ While the non-commercial educational LPFM stations will not be direct competitors for advertising dollars to existing commercial stations, they can threaten the economic health of these stations in meaningful ways. LPFM stations might very well siphon financial support away from small market stations. Local support that is presently coming to existing stations in the form of advertising might migrate to one or more LPFM stations in the form of underwriting.⁹ Moreover, the presence of one or more LPFM stations will certainly dilute audience share, on which securing advertising dollars is based. I note, for example, that many of the *Order's* protections exist only within the “protected contour” of the existing FM station. We know, however, that many FM stations reach significant audience share outside that contour and garner significant financial support from these areas.¹⁰ Finally, market dilution may make it difficult to secure financial support from lenders or investors.

The proponents of LPFM retort that the number of new stations will be few in a given market, and limited in their reach. Perhaps, in some markets this is true. But, the 41 new station possibilities in Elko, Nevada and Springerville, Arizona, or the 25 new

⁷ See *In re* Revision of Radio Rules and Policies, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 7 FCC Rcd. 6387, 6389, para. at 11 (1992) (emphasis added).

⁸ See generally, Haring & Shooshan (an economic analysis documenting the economic risks and possible loss to consumer welfare of the LPFM service).

⁹ 47 U.S.C. § 399b, 47 U.S.C. § 541(e).

¹⁰ It is true, that they do not enjoy protection from new full power stations outside their protected contours either, but new such stations would be hindered by the third adjacency spacing criteria and other limitations.

station possibilities in Billings, Montana certainly are not trivial to the established stations in those small, rural markets. In all, the Bureau tells us that there is a possibility of 700 to 1000 new LP100 stations (more if LP10 stations come into the market).

It is important to emphasize that an adverse impact on existing stations directly compromises the public interest. Locally originated programming that we favor is expensive to produce compared to the scale efficiencies of syndicated programming. The erosion of economic return, even slight in small markets, may adversely impact the quantity and quality of local programming, which is unlikely to be replaced by micro stations operating under even greater economic constraints. The link between local programming and economic efficiency is well-established. Former Commissioner Ervin S. Duggan stated it succinctly:

Broadcast stations that can't stay above water economically can't serve their communities. Broadcasters have always borne a fundamental obligation to provide service in the public interest. Most have borne that obligation quite well, despite occasional adversity. But the FCC and the nation cannot expect broadcasters to fulfill that obligation if the structure and economics of the industry don't permit it.¹¹

The threat of compromising this maxim of the public interest should have compelled the Commission to fully consider the economic impact of its decision.

Are these threats minimal or serious? We are left to wonder, wait and see for the Commission has refused to seriously consider what might be the economic consequences. I fear that many small and independent stations will find this to be the straw that broke the camels back, or that last "wafer thin mint"¹² forcing them to sell out or cut back its local programming. The result would be a further decrease in independent and perhaps in minority and female ownership of full power stations that we so often bemoan. The lost community value, furthermore, would not simply be transferred to the new LPFM stations. Those stations may serve a very small piece of the overall community, but could not possibly make up for the greater service coverage of the lost full power station, nor the lost opportunity for a minority or women to share in the fruits of the broadcasting business.

Signal Interference

I must confess that I have no clear idea as to whether or not existing broadcasters will suffer intolerable interference. The engineering studies on the record reach very different conclusions. When carefully examined, however, one finds that the basic methodologies and analysis are consistent with each other. Where these studies differ, is what the various proponents believe is "acceptable" interference or degradation

¹¹ "Localism Tied to the Tracks?," remarks of Commissioner Ervin S. Duggan, FCC before the Mississippi Association of Broadcasters (June 27, 1992).

¹² To those unfamiliar with Monty Python, this line comes from the film *The Meaning of Life*. I will not describe the scene other than to say the phrase is spoken by a waiter urging a patron who has over-indulged to have just one last morsel, the infamous "wafer thin mint."

of service. This I find to be a relatively subjective judgment rather than an engineering one, colored by the self-interest of the various proponents. It is my practice in such a situation to defer to the conclusions of the Offices and Bureaus when not clearly persuaded otherwise. Thus, customarily, I would accept the staff's conclusion that third adjacency protection is unnecessary. I do have some hesitancy, however, because I note that by doing so, we diverge from protections we have insisted on—some say with unbending resolve—with respect to other FM services. Nonetheless, to resolve this lingering doubt I would have introduced the LPFM system another way than that we adopt here.

A Better Way

On balance, I would have taken a different approach to introducing LPFM service. I believe in light of lingering concerns about signal interference and my pronounced concern about the economic impact of the new service we should have introduced this service gradually. It might begin with some experimental licensing in certain communities to assess the real world impact of signal interference. Subsequently, we could have fully introduced the service with third channel adjacency protections. This would have two benefits. First, it would minimize the risk of interference in a manner consistent with existing services and second, it would introduce substantially fewer stations into the market, thereby allowing us to evaluate the economic impacts of these new stations in these markets. Finally, if all went well, we could then move to full service with less adjacency protection, as warranted by our experience. Such an approach strikes me as prudent and preferable to the shotgun introduction which we let loose today.

Conclusion

For the foregoing reasons, I dissent in part.

January 20, 2000

SEPARATE STATEMENT OF COMMISSIONER SUSAN NESS

Re: In the Matter of Creation of a Low Power Radio Service (MM Docket No. 99-25)

Today we establish a new, unmistakably local radio service on the FM band, carefully crafted to ensure that community-based voices are heard, while maintaining the technical integrity of the full powered service. In so doing, we have enabled students, community organizations, churches, and those underrepresented in conventional broadcasting to provide programming of special interest to community and niche populations. I support this decision, but write separately to address the issues that I raised in my statement accompanying the Notice of Proposed Rulemaking last year regarding both the special nature of the service and the potential for interference with full power stations.

Community Based Service

The new low-powered service responds to the needs expressed by thousands of individuals and community-based groups who envision a vehicle to provide a very localized service, including high sports and debates, local campaign coverage, and other local public service needs. In no way is this service a miniaturized replica of a full powered station. Rather, it was structured to ensure that the service maintains its unique character. It is a non-commercial educational service. Licenses are non-transferable. A station's power cannot exceed 100 watts, establishing a coverage area approximately 3.5 miles around the transmitter. Local ownership is required for the first two years and during that time, licensees cannot own any other low powered FM station. After two years, they are subject to a low national cap, thus assuring a wide dissemination of ownership. Where there are mutually exclusive applications, priority will be given to those with an established community presence who pledge to provide more local programming over a longer broadcast day. I believe that these requirements and restrictions will preserve the special characteristics of this broadcast service.

Technical Interference

One of the most important functions of the Federal Communications Commission is our stewardship of the electromagnetic spectrum. In establishing the FCC, Congress charged this agency with avoiding chaos on the airwaves. Thus, I take very seriously our responsibility not to permit degradation of the FM band.

Moreover, I have long held the view that full powered radio broadcasters should be afforded the opportunity to transition into the digital world. Thus, I insisted that proponents of in-band-on-channel ("IBOC") digital radio broadcast systems have a

meaningful opportunity to comment on the impact of low-power stations on such digital services *before* the record closed in this proceeding.

After an exhaustive review of the technical documentation in this record -- including the filings of those promoting digital IBOC radio systems -- I believe that the technical limitations we have imposed are adequate to protect existing full powered stations from undue interference from low-powered stations. In addition, the record suggests that elimination of third adjacent channel protection does not hamper the deployment of currently proposed IBOC digital radio systems.

The item puts to rest the possibility that we would entertain further reductions in protection through elimination of the second adjacent channel restriction. I feared that the mere mention of the possibility of future action could chill financial investment in the full-powered radio service. This would have a devastating impact --not on the major groups -- but rather, on the small and medium market independent stations which struggle daily to serve their communities. Many of these independent station and small group owners are women and minorities – the very groups that are under-represented in the full power broadcast service.

Finally, the Bureau has assured me that the 20 km buffer zone is sufficient to ensure retention of audience reach if an FM station is forced to move from its existing tower to another tower, as is often the case when digital television stations commence service.

Conclusion

The new low power FM service was carefully designed to emphasize its unique community benefits, while minimizing the possibility of undue interference with the existing full power FM service. I will be watching carefully whether our hopes and expectations are met as this service is deployed.

January 20, 2000

SEPARATE STATEMENT OF CHAIRMAN WILLIAM E. KENNARD

Re: Creation of a Low Power Radio Service (MM 99-25)

When I first became Chairman of the FCC, I started talking to people about radio. And I encountered a lot of frustration on the part of folks who felt like they had ideas on how to put radio to good use serving their communities, but no way of putting those ideas into action.

I heard this from churches and schools, community groups and public safety officials, civic organizations, and non-English speaking communities, from the Haitians in South Florida to the Vietnamese of South Texas.

In meeting with these groups, I've been struck by all of the different ways they propose to use the airwaves. Some want low power FM to serve as a forum for discussions of issues relevant to local communities. Some want to provide job training for young people seeking to make a career in broadcasting. Some want to emphasize cultural learning, while others want to offer more formal instruction and training over the air. And some want to keep their communities informed of public safety concerns, including weather and traffic conditions.

I have also been struck by the enthusiasm that these groups have when simply discussing the possibility of a low power service. Every day, it seems, we read about a bigger merger and more consolidation, all of which leads to the perception that the interests of small groups and individuals are being lost, and that important voices and viewpoints are being shut out.

The possibility of opening up available spectrum in the FM band has sparked creativity. Among those who propose new uses for the FM spectrum, the excitement is palpable.

And the fact is, there is more room at the table; there is spectrum available for these and other uses. But rather than being able to use the available spectrum to test their ideas in the marketplace, these groups are being shut out, prohibited from serving their communities.

Today we recognize the important role of more modest technical facilities, and throw open the doors of opportunity to the smaller, community-oriented broadcaster.

Now there are those that argue that there is no viable business case for low power FM, that the economics just don't work, and that the FCC should save low power broadcasters from themselves. I am not convinced of this because it is not the business of the FCC to pick winners and losers. We should empower consumers to decide what he or she prefers, rather than ruling out some options on our own and depriving the listener of making that choice for him- or herself

That's what faith in the marketplace is all about. Remember, there was a time in this country when AM broadcasters said that FM would never make it.

Some argue that the creation of a new FM service means there will be more licensees subject to our broadcasting rules, making enforcement of our rules more difficult and more expensive. I am skeptical when concerns like administrative expense and convenience are invoked to justify the exclusion of new competitors in the market. That's like saying we won't issue any more drivers' licenses because there are already too many speeders. That would penalize those who have not broken the law, but do nothing to crack down on those who have.

The most serious objection to low power FM, and one that I have studied extensively, is the claim that low power FM would cause interference to existing radio stations. I have pledged all along that I would not support any proposal that threatens the integrity of existing radio services. I am pleased to say that my support of today's proposal is consistent with that pledge.

Protecting the current FM radio service is an obligation that cannot be compromised. In a relatively short period of time, the FM band has been transformed from a virtual desert into a vibrant and critical source of news, information, and entertainment in the daily lives of millions of Americans. It needs and deserves our protection.

That is why we have invested so many resources in conducting and analyzing technical studies on the issue of low power FM. I suspect that low power FM has been subjected to as much testing and engineering as any radio service we have ever looked at. And we have learned quite a lot.

The threat of interference has persuaded us to back away from some elements of the original low power proposal. For instance, we are limiting low power FM to 100 and 10 watt stations, even though we initially raised the possibility of 1,000 watt stations as well. Likewise, while we considered eliminating both second and third adjacent channel protections, we will be eliminating only the latter, while retaining the former.

While some studies suggest the possibility of interference even with the limitations we have adopted, the flaws underlying these studies seem plain. Some of the studies cited in opposition to a low power FM service start with the premise that most existing FM radios do not provide adequate reception even today, before the creation of a low power service. These commenters suggest that we adopt standards that bear no relation to the choices that consumers have repeatedly made in the market, and that we reject reception standards that the over one-half billion radios now in use implicitly endorse. I see no reason for the FCC to invent standards on its own, when consumers have already voted with their dollars to decide on an adequate level of performance.

Our fundamental obligation under the law, as codified in section 1 of the Communications Act, is to “make available . . . a rapid, efficient, Nation-wide and worldwide wire and radio and communication service.” At the heart of this mandate is the notion of opening up new opportunities in a way that protects the integrity of existing services. Today’s order does exactly that and I am proud to support it.

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